

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

NANETTE AURDAL and ARNOR STEVEN AURDAL
Respondents,

v.

PHILLIP B. HUNTINGFORD and "JANE DOE" HUNTINGFORD,
husband and wife, and the marital community composed thereof,
CHARLES R. HUNTINGFORD and "JANE DOE" HUNTINGFORD,
husband and wife, and the marital community composed thereof, GLEN J.
HUNTINGFORD and "JANE DOE" HUNTINGFORD, husband and
wife, and the marital community composed thereof, as individuals and as a
partnership doing business as OUT R WAY FARM,
Respondents,

and

UNITED TELEPHONE COMPANY OF THE NORTHWEST, dba
SPRINT, an Oregon corporation doing business in the State of
Washington, JOHN BURNSTON AND "JANE DOE" BURNSTON,
husband and wife, and the marital community composed thereof,
Appellants.

BRIEF OF APPELLANTS

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I. INTRODUCTION

In this negligence action arising out of separate motor vehicle accidents, the trial court committed two critical errors. At Plaintiffs' urging and over the objection of Appellants, the trial court gave a jury instruction based on an incomplete description of Washington's hit and run statute. This was reversible error because the statutory duties were not applicable to the case. Even had the duties been applicable, giving the instruction was reversible error because the instruction's description of those duties was inaccurate and misleading.

II. ASSIGNMENTS OF ERROR

Assignment of Error

No. 1: The trial court erred in giving instruction 18 to the jury.

Issues Pertaining to Assignment of Error

No. 1: In December 2001, Washington's hit and run statute required the driver of a vehicle involved in an accident resulting in injury or death to any person or damage to another vehicle or other property to stop the vehicle and remain at the scene of the accident until he or she had (a) given identifying information to any person injured or the driver or occupant of any vehicle collided with, and (b) rendered reasonable assistance to any person injured in the accident. RCW 46.52.020(2), (3). Were those statutory duties applicable (a) when a collision occurred

between a truck and an unattended horse on a public highway, and no person was at the scene of the accident other than the driver of the truck, or (b) in a negligence action brought by a driver of a Ford Explorer who later drove over the horse? (Assignment of Error No. 1.)

No. 2: Did a jury instruction misrepresent the duties imposed by the hit and run statute when it said that the driver of a vehicle involved in an accident resulting in damage to other property is statutorily required to stop the vehicle and remain at the scene of the accident, but did not disclose that a driver involved in such an accident is statutorily required to stop and remain at the scene of the accident only until identifying information is given to persons specified in the statute and reasonable assistance is rendered if a person is injured? (Assignment of Error No. 1.)

No. 3 Was it reversible error to give an instruction (a) informing the jury of inapplicable law, or (b) containing an erroneous statement of the law? (Assignment of Error No. 1.)

III. STATEMENT OF THE CASE

A. Statement of Facts

In 2001, John Burnston was employed by United Telephone Company of the Northwest as an installer/repairman. RP 1092-93. He had been employed by the company for more than 25 years. RP 1093. At approximately 5:00 pm on Friday, December 14, 2001, after completing a

project in Chimacum, Burnston and a co-worker climbed into their respective vehicles and headed to a company office located at the intersection of Center Road and Egg and I Road. RP 98, 1093-94. Burnston drove a company utility truck; his co-worker drove a van. RP 1093. It was a dark, stormy night. RP 98, 194-96.

Burnston was following his co-worker southbound on the public highway called Center Road and was only a short distance from the company office when a black horse jumped out suddenly from the side of the road. RP 98-99, 106, 1093-96, 1116. Burnston swerved, but was unable to avoid a collision. RP 1095-96.

After hitting the horse, Burnston struggled to get his truck back under control and in his lane. RP 1096. Although he knew there had been a collision, Burnston did not believe the horse had been killed. RP 1019-20, 1100, 1107-08. He had no cell phone, his flashlight was not working, and he knew that truck radios did not work well in that area. RP 1099, 1103; *see also* RP 103. There was not enough room on the shoulder of the road to park his truck safely off the pavement. RP 1101; *see also* RP 52-53. Burnston thought it would not be safe to back up, and he knew it was company policy not to back up utility trucks without a spotter. RP 1102, 1108, 1158. Believing it was safest to drive the extra few hundred feet to the company office, park his truck safely off the road, and summon his co-

worker to return to the scene with him and provide assistance, Burnston did just that. RP 1019, 1096-98, 1100-01, 1108, 1120, 1158, 1160.

When Burnston and his co-worker arrived back at the scene, they discovered a horse dead at the side of the road, and Nanette Aurdal's Ford Explorer south of the horse. RP 1097-99, 568. The co-worker parked his van opposite Aurdal's vehicle and headed north to set out flares. RP 88, 105-06, 1098, 1105. Burnston exited the van and crossed the road to ask Aurdal, who had gotten out of her car, if she was okay. RP 566, 568, 1098. Burnston told Aurdal that he had hit the horse. RP 568.

Next on the scene was the farrier who had been trying to catch the escaped horse. RP 704, 1176, 1180-87. He saw lights on the road, ran to make sure that everyone was okay, and then went to get one of the owners of the horse, Phil Huntingford. RP 1104, 1187, 531. When Huntingford arrived, he saw Burnston, Aurdal, and a person he did not recognize standing by Burnston. RP 1030. The horse was dead, and Aurdal told Huntingford that she had run over it. RP 544, 1029-30, 1032. When Huntingford asked if he could move the horse, Aurdal told him she did not want it moved until the sheriff arrived. RP 1032, 1104-05.

When the sheriff arrived, Aurdal told him she was fine and did not want an aid car. RP 566, 197. Burnston told the sheriff he had collided with the horse, that his truck's passenger side mirror had been knocked

off, and that after the collision, he had gone up the road to his work station to get his co-worker to help him. RP 198. He was cooperative in answering the sheriff's questions. RP 204-05. Afterwards, because Aurdal seemed shaken and was concerned about getting home, Burnston volunteered to drive her home. RP 1105. Burnston drove her to her house in the Ford Explorer. RP 1105-06, 568.

B. Statement of Proceedings in Trial Court

On December 2, 2004, Aurdal and her husband ("Plaintiffs") filed a complaint for damages in Jefferson County Superior Court. CP 1-6. Plaintiffs asserted negligence claims against the Huntingfords, for allowing their horse to escape their property and become a hazard on the road, and against Burnston and his employer (collectively, "Appellants"), for leaving a dead horse in the roadway without providing any warning to other drivers of the road hazard. *Id.* Appellants denied having been negligent, CP 7-10, as did the Huntingfords, and the case went to trial before a jury from June 21 through July 1, 2010, RP 1-1301.

On July 2, 2010, the jury returned a verdict in favor of Plaintiffs and against Appellants. CP 158. Plaintiffs did not prevail on their claim against the Huntingfords. CP 157-59. Judgment was entered on the verdict on July 30, 2010. CP 157-59. Appellants timely filed a notice of appeal on August 27, 2010. CP 160-64.

IV. SUMMARY OF THE ARGUMENT

At the trial of this action, Plaintiffs proposed the jury be instructed that violation of Washington's former hit and run statute, RCW 46.52.020, could be considered as evidence of negligence. Plaintiffs offered a jury instruction based on the statutory language in effect when the truck Burnston was driving collided with the Huntingfords' horse.¹ Although purporting to describe what the statute "provide[d]," the proffered instruction omitted critical portions of the statute.

Appellants objected to the proposed instruction, arguing that the statute was not applicable. RP 1231-32; *see also* exception taken at RP 1266-67. Despite expressing doubts as to the statute's applicability, the trial court gave Plaintiffs' proposed instruction to the jury.² RP 1230-32, 1268, 1288; CP 142. This was reversible error both because the hit and run statute was not applicable to the case and because the instruction misstated the law.

V. ARGUMENT

The trial court erred in giving instruction 18 to the jury both because the instruction was based on inapplicable law and because the

¹ RCW 46.52.020 is still in effect today, although subsection (2) of the statute was rewritten in 2003. Unless the text indicates otherwise, citations to RCW 46.52.020 in this brief shall refer to the version of the statute in effect in December 2001.

² A copy of instruction 18 is included in the Appendix at page 1.

instruction contained an inaccurate and misleading description of Washington's hit and run statute. The standard of review for both errors is de novo. *See Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 635, 244 P.3d 924 (2010) (jury instructions are reviewed de novo); *Kappelman v. Lutz*, 167 Wn.2d 1, 6, 217 P.3d 286 (2009) (trial court's decision to give jury instruction is reviewed de novo if based upon matter of law).

A. The Trial Court Committed Reversible Error in Giving a Jury Instruction Based on Washington's Hit and Run Statute, RCW 46.52.020, Because the Duties Imposed by That Statute Were Not Applicable to This Action.

Plaintiffs in this case argued that Burnston violated Washington's hit and run statute, and that the jury should be permitted to consider the statutory violation as evidence of negligence. But for a party in a negligence action to be entitled to argue the existence and breach of a statutory duty as evidence of negligence, the statutory duty must apply to the case. *See Barrett v. Lucky Seven Saloon, Inc.*, 152 Wn.2d 259, 266-74, 96 P.3d 386 (2004); *Bell v. State*, 147 Wn.2d 166, 177, 52 P.3d 503 (2002); *Skeie v. Mercer Trucking Co.*, 115 Wn. App. 144, 148-51, 61 P.3d 1207 (2003). For the reasons discussed below, the statutory duties established by the former version of this state's hit and run statute, RCW 46.52.020, were not applicable to this action.

RCW 46.52.020³ set forth the duties imposed upon the driver of a vehicle involved in an accident. *See State v. Vela*, 100 Wn.2d 636, 638, 673 P.2d 185 (1983). If the accident resulted in the injury or death of a person or damage to another attended vehicle or other property, the duties imposed were as follows: The driver was to stop the vehicle at the scene of the accident or as close to it as possible, and remain at the scene “until he or she has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.” RCW 46.52.020(1), (2). Under subsection (3), “[u]nless otherwise provided in subsection (7),” the driver involved in such an accident was required to “give his or her name, address, insurance company, insurance policy number, and vehicle license number and ... exhibit his or her vehicle driver’s license to any person struck or injured or the driver or any occupant of, or any person attending, any ... vehicle collided with” and “render to any person injured in such accident reasonable assistance.” RCW 46.52.020(3);⁴ *see Vela*, 100 Wn.2d at 638; *State v. Martin*, 73 Wn.2d 616, 624, 440 P.2d 429 (1968).

³ See Laws of 2001, chapter 145, section 1 (amending RCW 46.52.020 in May 2001) in the Appendix at page 2.

⁴ Under subsection (7), “[i]f none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (3) of this section, and no police officer is present,” then the driver, “after fulfilling all other requirements of subsections (1) and (3) of this section

If someone was injured or killed in the accident, subsection (4) of the statute made it a felony to leave the scene of the accident without first fulfilling the statutory duties. Otherwise, subsection (5) made the crime a gross misdemeanor. RCW 46.52.020(4), (5); *see Vela*, 100 Wn.2d at 639. The statute did not (and still does not⁵) impose any civil liability for failing to perform the statutory duties.

No person was injured or killed when the truck Burnston was driving collided with the Huntingfords' horse. No police officer or other person was present at the scene of the accident. Accordingly, there was no one to whom Burnston could provide identifying information or render assistance, in order to "fulfill[] the requirements of subsection (3)." Because the statute on its face did not require Burnston to stop and give information or render aid to an injured or deceased horse, the statute was inapplicable.

The statute also was inapplicable because it was not intended to protect against the harm that occurred. To decide whether violation of a public law may be considered in determining liability (i.e., whether a statutory violation is applicable or relevant to a liability determination), Washington courts apply a four-part test drawn from section 286 of the

insofar as possible," was to report the accident promptly to the nearest office of the police. RCW 46.52.020(7).

⁵ See Appendix at page 4 for the current version of RCW 46.52.020.

Restatement (Second) of Torts (1965): “The statute’s purposes, exclusively or in part, must be (1) to protect a class of persons that includes the person whose interest is invaded; (2) to protect the particular interest invaded; (3) to protect that interest against the kind of harm that resulted; and (4) to protect that interest against the particular hazard from which the harm resulted.” *Mathis v. Ammons*, 84 Wn. App. 411, 928 P.2d 431 (1996); accord *Barrett*, 152 Wn.2d at 269; *Estate of Kelly v. Falin*, 127 Wn.2d 31, 38, 896 P.2d 1245 (1995) (“Violation of a criminal statute is evidence of negligence only if the statute was intended to protect both the person bringing the action and the ‘particular interest’ asserted.”); *Potter v. Wilbur-Ellis Co.*, 62 Wn. App. 318, 324-25, 814 P.2d 670 (1991) (“The breach of a legal duty is admissible as evidence of negligence under RCW 5.40.050 only when the damage is caused by the very hazard against which the violated statute is intended to protect.”).

The criminal hit and run statute, RCW 46.52.020, was intended to (a) “prevent people from avoiding liability for their acts by leaving the scene [of the accident] without identifying themselves,” and (b) ensure that assistance was provided as soon as possible for persons injured in the accident. *State v. Perebeynos*, 121 Wn. App. 189, 195, 87 P.3d 1216 (2004) (internal quotation marks and citation omitted). The statute was not intended to prevent subsequent accidents. See *City of Seattle v. Stokes*,

42 Wn. App. 498, 502, 712 P.2d 853 (1986) (distinguishing between reckless driving statute, which is “aimed at preventing the danger of accidents,” and hit and run statute, which is “aimed at protecting accident victims”).

When the truck Burnston was driving collided with the Huntingfords’ horse, neither Plaintiff was involved in that collision. Plaintiffs did not sustain any injuries or property damage in that accident. Rather, their injuries were sustained as the result of a subsequent accident, which occurred when Nanette Aurdal’s Ford Explorer struck the dead horse. Accordingly, Plaintiffs’ harm was not of the type the hit and run statute was intended to prevent, and the statute was not applicable to this action.

“Jury instructions are proper when they permit parties to argue their theories of the case, do not mislead the jury and *properly inform the jury of the applicable law.*” *Del Rosario v. Del Rosario*, 152 Wn.2d 375, 382, 97 P.3d 11 (2004) (internal quotation marks and citation omitted); *see also Bell*, 147 Wn.2d at 177 (jury instruction setting forth statutory language “is appropriate only if the statute is applicable”). They are improper if they mislead the jury or do not properly inform the jury of the applicable law. *State v. Vander Houwen*, 163 Wn.2d 25, 29, 177 P.3d 93 (2008). In *Del Rosario*, 152 Wn.2d at 387, the Washington Supreme

Court affirmed the Court of Appeals' holding that it was improper for the trial court to have given a jury instruction based on inapplicable law. The judgment was reversed and the case remanded for retrial. *Id.*

In this case, because the hit and run statute was not applicable, instruction 18 did not properly inform the jury of the applicable law. The trial court therefore committed reversible error when it gave that instruction to the jury. The judgment entered in Plaintiffs' favor should be reversed and the matter remanded for a new trial.

B. The Trial Court Committed Reversible Error by Giving a Jury Instruction Containing an Inaccurate and Misleading Statement of the Law.

A jury instruction containing an erroneous statement of the law is reversible error when it prejudices a party. *Gregoire*, 170 Wn.2d at 635. A clear misstatement of the law is presumed to be prejudicial. *Thompson v. King Feed & Nutrition Serv., Inc.*, 153 Wn.2d 447, 453, 105 P.3d 378 (2005).

Compounding the prejudice arising out of its decision to give the jury an instruction based on inapplicable law, the trial court committed further error by misstating the law in the instruction that was given. Instruction 18 told the jurors that a driver involved in an accident has a statutory obligation to stop and remain at the scene of the accident. It did *not* tell the jurors that the driver's obligation was only to stop and remain

at the scene “until he or she has fulfilled the requirements of subsection (3)” of the statute. In other words, the instruction did not tell the jurors that a driver’s statutory obligation was only to stop and remain at the scene until he or she had provided identifying information to certain persons and had rendered reasonable assistance to any injured person.

The instruction omitted the parts of the hit and run statute that effectuated the statute’s purposes. *See Perebeynos*, 121 Wn. App. at 195 (describing purposes); *cf.* RCW 46.52.020(6) (referring to ordinances “consisting of substantially the same language ... of failure to stop **and** give information or render aid” (emphasis added)). The instruction omitted integral parts of the statute, misrepresented what the statute “provide[d],” CP 142, and clearly misstated the law.

The misleading nature of instruction 18 would support reversal even if it were arguable that the instruction did not contain a “clear” misstatement of the law. When, as here, there is an error in an instruction given on behalf of the party in whose favor the verdict was returned, the error is presumed to have been prejudicial, and to furnish ground for reversal, unless it affirmatively appears that the error was harmless. *See Mackay v. Acorn Custom Cabinetry, Inc.*, 127 Wn.2d 302, 311, 898 P.2d 284 (1995) (reversing and remanding for new trial, based on jury instruction containing erroneous description of legal standard); *Anfinson v.*

FedEx Ground Package Sys., Inc., 159 Wn. App. 35, 244 P.3d 32 (2010) (reversing liability verdict in bifurcated case due to prejudicial misstatement of law in jury instruction). An error is harmless only if it is “trivial, or formal, or merely academic, and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case.” *Mackay*, 127 Wn.2d at 311 (internal quotation marks, emphasis, and citation omitted).

In no way can the omission of integral parts of RCW 46.52.020(3) be characterized as harmless error. The trial court judge was aware of the full statutory requirements, *see* RP 1230, but when announcing his decision to give instruction 18, explained that he did so because “there is a duty to stop, and there’s some evidence to indicate that [Burnston] didn’t stop and had he stopped it could have ... changed things,” RP 1268. The jurors could well have believed as the judge did and based on that belief decided that the alleged statutory violation was sufficient evidence of negligence to warrant a verdict in Plaintiffs’ favor. Put differently, the evidence could have persuaded the jurors that Burnston exercised ordinary care except for his failure to comply with a statutory “duty to stop.” Because there is no statutory “duty to stop” outside the requirement of stopping **and** giving information or rendering aid, the prejudice to Appellants caused by the erroneous instruction is manifest.

VI. CONCLUSION

For the reasons stated above, Appellants respectfully submit that the judgment in this case should be reversed. The matter should be remanded to the superior court for retrial.

DATED this 10th day of February, 2011.

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APPENDIX

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JURY INSTRUCTION NO. 18

A statute provides that:

The driver of any vehicle involved in an accident resulting in damage to other property shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to, and in any event shall remain at, the scene of such accident; every such stop shall be made without obstructing traffic more than is necessary.

CHAPTER 145

[Substitute House Bill 1649]

HIT AND RUN ACCIDENTS—DECEASED PERSONS

AN ACT Relating to hit and run causing injury to the body of a deceased person; amending RCW 46.52.020; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.52.020 and 2000 c 66 s 1 are each amended to read as follows:

(1) A driver of any vehicle involved in an accident resulting in the injury to or death of any person or involving striking the body of a deceased person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to, and in every event remain at, the scene of such accident until he or she has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.

(2) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person or damage to other property shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to, and in any event shall remain at, the scene of such accident until he or she has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.

(3) Unless otherwise provided in subsection (7) of this section the driver of any vehicle involved in an accident resulting in injury to or death of any person, or involving striking the body of a deceased person, or resulting in damage to any vehicle which is driven or attended by any person or damage to other property shall give his or her name, address, insurance company, insurance policy number, and vehicle license number and shall exhibit his or her vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person or on his or her behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this subsection be evidence of the liability of any driver for such accident.

(4)(a) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident resulting in death is guilty of a class B felony and, upon conviction, is punishable according to chapter 9A.20 RCW.

(b) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this

section in the case of an accident resulting in injury is guilty of a class C felony and, upon conviction, is punishable according to chapter 9A.20 RCW.

(c) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident involving striking the body of a deceased person is guilty of a gross misdemeanor.

(d) This subsection shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying with this section.

(5) Any driver covered by the provisions of subsection (2) of this section failing to stop or to comply with any of the requirements of subsection (3) of this section under said circumstances shall be guilty of a gross misdemeanor: PROVIDED, That this provision shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying herewith.

(6) The license or permit to drive or any nonresident privilege to drive of any person convicted under this section or any local ordinance consisting of substantially the same language as this section of failure to stop and give information or render aid following an accident with any vehicle driven or attended by any person shall be revoked by the department.

(7) If none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (3) of this section, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of subsections (1) and (3) of this section insofar as possible on his or her part to be performed, shall forthwith report such accident to the nearest office of the duly authorized police authority and submit thereto the information specified in subsection (3) of this section.

Passed the House March 12, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 146

[Substitute House Bill 1793]

COURT FILING FEES

AN ACT Relating to court filing fees; amending RCW 36.18.012, 36.18.016, 36.18.025, 40.14.027, 41.50.136, 46.87.370, 50.20.190, 50.24.115, 51.24.060, 51.48.140, 82.32.210, 82.36.047, and 82.38.235; and reenacting and amending RCW 51.32.240.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 36.18.012 and 1999 c 42 s 634 are each amended to read as follows:

(1) Revenue collected under this section is subject to division with the state for deposit in the public safety and education account under RCW 36.18.025.



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ANNOTATED REVISED CODE OF WASHINGTON
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*** STATUTES CURRENT THROUGH THE 2010 REGULAR AND 2ND SPECIAL SESSIONS ***
*** AND RESULTS OF NOVEMBER 2010 ELECTION ***

TITLE 46. MOTOR VEHICLES
CHAPTER 46.52. ACCIDENTS -- REPORTS -- ABANDONED VEHICLES

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 46.52.020 (2011)

§ 46.52.020. Duty in case of personal injury or death or damage to attended vehicle or other property -- Penalties

(1) A driver of any vehicle involved in an accident resulting in the injury to or death of any person or involving striking the body of a deceased person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to, and in every event remain at, the scene of such accident until he or she has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.

(2) (a) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person or damage to other property must move the vehicle as soon as possible off the roadway or freeway main lanes, shoulders, medians, and adjacent areas to a location on an exit ramp shoulder, the frontage road, the nearest suitable cross street, or other suitable location. The driver shall remain at the suitable location until he or she has fulfilled the requirements of subsection (3) of this section. Moving the vehicle in no way affects fault for an accident.

(b) A law enforcement officer or representative of the department of transportation may cause a motor vehicle, cargo, or debris to be moved from the roadway; and neither the department of transportation representative, nor anyone acting under the direction of the officer or the department of transportation representative is liable for damage to the motor vehicle, cargo, or debris caused by reasonable efforts of removal.

(3) (a) Unless otherwise provided in subsection (7) of this section the driver of any vehicle involved in an accident resulting in injury to or death of any person, or involving striking the body of a deceased person, or resulting in damage to any vehicle which is driven or attended by any person or damage to other property shall give his or her name, address, insurance company, insurance policy number, and vehicle license number and shall exhibit his or her vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person or on his or her behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this subsection be evidence of the liability of any driver for such accident.

(4) (a) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident resulting in death is guilty of a class B felony and, upon conviction, is punishable according to chapter 9A.20 RCW.

(b) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident resulting in injury is guilty of a class C felony and, upon conviction, is punishable according to chapter 9A.20 RCW.

(c) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident involving striking the body of a deceased person is guilty of a gross misdemeanor.

(d) This subsection shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying with this section.

(5) Any driver covered by the provisions of subsection (2) of this section failing to stop or to comply with any of the requirements of subsection (3) of this section under said circumstances shall be guilty of a gross misdemeanor: PROVIDED, That this provision shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying herewith.

(6) The license or permit to drive or any nonresident privilege to drive of any person convicted under this section or any local ordinance consisting of substantially the same language as this section of failure to stop and give information or render aid following an accident with any vehicle driven or attended by any person shall be revoked by the department.

(7) If none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (3) of this section, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of subsections (1) and (3) of this section insofar as possible on his or her part to be performed, shall forthwith report such accident to the nearest office of the duly authorized police authority and submit thereto the information specified in subsection (3) of this section.

HISTORY: 2002 c 194 § 1; 2001 c 145 § 1; 2000 c 66 § 1; 1990 c 210 § 2; 1980 c 97 § 1; 1979 ex.s. c 136 § 80; 1975-'76 2nd ex.s. c 18 § 1. Prior: 1975 1st ex.s. c 210 § 1; 1975 c 62 § 14; 1967 c 32 § 53; 1961 c 12 § 46.52.020; prior: 1937 c 189 § 134; RRS § 6360-134; 1927 c 309 § 50, part; RRS § 6362-50, part.

NOTES: EFFECTIVE DATE -- 1980 C 97: "This 1980 act shall take effect on July 1, 1980." [1980 c 97 § 3.]

EFFECTIVE DATE -- SEVERABILITY -- 1979 EX.S. C 136: See notes following *RCW 46.63.010*.

SEVERABILITY -- 1975 C 62: See note following *RCW 36.75.010*.

CROSS REFERENCES.

Rules of court: Bail in criminal traffic offense cases -- Mandatory appearance -- *CrRLJ 3.2*.

Arrest of person violating duty in case of injury to or death of person or damage to attended vehicle: *RCW 10.31.100*.

EFFECT OF AMENDMENTS.

2002 c 194, § 1, effective June 13, 2002, rewrote subsection (2).

2001 c 145 § 1, effective July 22, 2001, inserted "involving striking the body of a deceased person" near the beginning of subsection (1) and inserted "involving striking the body of a deceased person, or resulting in" near the beginning of the first sentence of subsection (3); inserted subsection (4)(c) and redesignated the former subsection (4)(c) as present subsection (4)(d).

JUDICIAL DECISIONS

ANALYSIS

Constitutionality

Compensation of victims

Corpus delicti

CERTIFICATE OF FILING AND SERVICE BY MAIL

I certify that I mailed, or caused to be mailed, the original and one copy of the foregoing Brief of Appellants, postage prepaid, via first class U.S. mail, on the 10th day of February, 2011, to:

Mr. David Ponzoha
Clerk of the Court
Court of Appeals: Division II
950 Broadway, #300 MS TB-06
Tacoma, WA 98402

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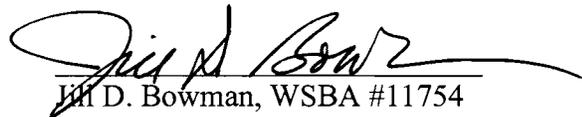
I also certify that I mailed, or caused to be mailed, a copy of the foregoing Brief of Appellants, postage prepaid, via first class U.S. mail, on the 10th day of February, 2011, to each of the following counsel of record at the following addresses:

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